

Civil Revision Petition No.579/2000
Ramhans & Ors *Versus* Hetram & Ors.

Date of Order ::: 23/08/06

Hon'ble Mr. Justice Ajay Rastogi

Mr. N.K.Singhal, for petitioners (plaintiff)
Mr. J.P.Goyal, for respondents (objectors)

Instant revision petition has been preferred by petitioner plaintiff against order dt.23/05/2000 whereby learned Additional District Judge No.1, Bharatpur allowed civil misc. application No.107/96 moved by respondents U/s 47 read with O.21 R.90, CPC, raising objections in execution case No.37/93 and whereby judgment & decree dt.18/09/90 in Civil Suit No.108/88 was declared null & void holding it being obtained by fraud.

Facts, in brief, necessary for adjudication of this petition are that original plaintiff Moti filed civil suit against Chhitaria & Mst. Harbheji (son & wife of Mangal) and Amar Singh (defendants) seeking specific performance of contract as well as for grant of permanent injunction. It was inter-alia averred in the plaint that defendants sold half of land bearing Khasra No.197 & 198 measuring 8 bighas 9 biswas to plaintiff Moti for sale consideration of Rs.35,000/- vide agreement to sale dt.07/06/88, and since defendant failed to abide by terms of sale agreement and also failed to get sale deed registered hence plaintiff was forced to file suit against defendants respondents to perform terms of agreement to sale and further seeking permanent injunction against them.

In written statement, defendants accepted

claim as referred to in the plaint and did not dispute the claim, as such learned Trial Court passed decree vide judgment dt.18/09/90 in favour of the plaintiff. For execution of the decree, application was filed on 29/03/91 and after intervention of the Court; sale deed in pursuance of decree dt.18/09/90 was got registered in favour of plaintiffs on 16/10/96. Indisputably, suit property in respect of which specific performance of contract was sought was ancestral duly inherited by Mangal who since died much before agreement to sale dt.07/06/88 was entered into and whose widow Smt. Harbheji & son Chhitaria and so also Amar Singh (brother of Mangal) are alleged to have signed agreement to sale dt.07/06/88 but pendente execution proceedings, Amar Singh too died on 13/10/93. Plaintiff petitioners failed to show about service of notice issued of execution application being made effective upon Amar Singh in his lifetime.

When petitioners proceeded to take possession of suit property, legal heirs of Amar Singh (respondents) raised objections by filing application U/s 47 read with O.21 R.90 CPC before Executing Court. Plaintiffs also filed their counter to the objections of respondents. After examining material on record particularly taking note of agreement to sale in question, learned Executing Court recorded finding that judgment & decree dt. 18/09/90 has been obtained by plaintiffs fraudulently, so was declared as null & void in the eye of law and after recording such finding, allowed objections raised by respondents and further directed to initiate criminal proceedings against plaintiff

under order dt.23/05/2000. Hence this petition.

Counsel for petitioners contends that once the decree was satisfied and executed by intervention of Court as a consequence whereof sale deed was registered by Sub registrar on 16/10/96, objections raised by respondents U/s 47 read with O.21 R.90 CPC were not maintainable and only remedy available to them is to file suit for cancellation of sale deed, which indisputably was not filed by either of present objectors or legal heirs of one of co-sharers Mangal; as such very premise on which learned Executing Court proceeded in examining so as to uphold the same has resulted in gross material illegality and that apart, Executing Court has no jurisdiction to declare the judgment & decree to be null and void for having been obtained by fraud and declaring it to be non est. In support of this contention, Counsel placed reliance upon the decision of Apex Court in **Bhawarlal Bhandari Vs. M/s Universal Heavy Mechanical Lifting Enterprises (AIR 1999 SC 246)**.

Counsel for petitioner submits that indisputably suit property was ancestral and objections were raised only by legal heirs of Amar Singh who was one of co-holders of suit property, and not by legal heirs of other co-sharer Mangal, at any stage and as such learned Executing Court committed serious error of law in declaring judgment & decree to be non est particularly when co-sharer of suit property as legal heir of Mangal has never raised any objection. Counsel further submits that learned Executing Court committed error of jurisdiction in holding sale agreement to be forged while it was

under obligation to have referred sale agreement to the FSL or handwriting expert to examine its genuineness; in absence whereof merely by leading document in question in evidence, very finding recorded by Executing Court in holding it to be obtained by fraud is gross material irregularity committed and the same deserves to be set aside.

Per contra, Counsel for respondents vehemently contends that for the first time, it came to their notice when petitioner approached for taking possession of the property; and since no such sale agreement was ever entered into, immediately objections were raised by filing application U/s 47 read with O.21 R.90 CPC and after amendment made in the Code of Civil Procedure, only remedy available is to question a decree by raising objections and not by filing separate suit and in support of his contentions, Counsel placed reliance upon the decision of Apex Court in ***SP Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs (1993(3) Cur.Civ.Cases 620); Desh Bandhu Gupta Vs. N.L.Anand & Rajinder Singh (1993(3) Cur.Civ.Cases 737); and of this Court in Mangilal Vs. State of Rajasthan (1997 (2) RLR 755) & Shri Pareasar Vs. Municipal Board Mt.Abu (1996(1) RLR 649).***

On the strength of afore-cited judgments, Counsel submits that no error was committed by respondents in raising their objections against judgment & decree which was obtained by petitioner in fraudulent manner which they were able to establish before Executing Court and the finding recorded by court below in this regard is duly supported by

material on record and based on facts does not require interference.

Counsel further submits that once there was no such sale agreement as referred to by plaintiff petitioners being executed on 07/06/88 which too was referred by trial Court under disputed judgment & decree dt.18/09/90, whereas suit was filed for specific performance of sale agreement dt.07/06/88 which was never produced on record but sale agreement produced along with plaint was of dt.07/06/86. Counsel for respondents further submits that a bare reading of documents in question if compared by certified copy produced by objectors clearly show that the certified copy of sale agreement produced by petitioner plaintiff contains 25 lines whereas certified copy of sale agreement (Ex.A.1) produced by objectors (respondents) contains 26 lines that apart neither photograph of Mst.Harbheji was annexed to it nor it is borne out for what purpose, stamp paper was bought and that apart, if seller of suit property has no objection or they were owning signatures on the document, and were willing to execute in ordinary course, there was no occasion applicable of filing suit but the fact revealed was that immediately after filing of the suit for specific performance of contract, even before the date of service of summons, written statement was filed acknowledging sale agreement in question besides contents of the plaint, itself, without any loss of time, judgment & decree was obtained by petitioners. Counsel submits that chronological events (supra) duly considered by Executing Court reveal that judgment & decree in question was obtained by fraud and no error was

committed by declaring it to be null & void in the eye of law. Counsel further submits that he has no objection if part of judgment & decree obtained against Harpheji and Chhitaria is upheld.

I have considered rival contentions of Counsel for the parties and with their assistance, examined material on record. First & foremost contention raised by Counsel for petitioner about maintainability of objections raised by respondents U/s 47 read with O.21 R.90 CPC, is not legally sustainable in the light of settled law. In ***Desh Bandhu Gupta Vs. N.L.Anand & Rajinder Singh*** (supra), Apex Court examined scope of S.47 CPC read with O.21 R.90 CPC and observed as under: -

"16. Under S.47 all questions relating to execution, discharge or satisfaction of the decree should be determined by the execution court alone. The pre-sale illegalities committed in the execution are amenable to the remedy under Section 47. Post sale illegalities or irregularities causing substantial injury to the judgment debtor are covered under O.21, R.90. Sub-rule (1) whereof covers the field of material irregularities or fraud in publicity or conducting the sale. Sub-rule (2) enjoins proof thereof and the Court should find that by reason thereof the applicant sustained substantial injury. In the total absence of drawing up of the proclamation of sale and settlement of its term by judicial application of mind renders the sale a nullity being void. It is covered by Section 47. The non application of mind whether sale of a part of the property would satisfy the decree debt is a material irregularity doing substantial injury to the appellant attracting Order 21 R.90. In either case the sale is liable to be set aside. It is true that there is distinction between mere irregularity and material irregularities and the sale is not liable to be set-aside on proof of mere irregularity. It must be material irregularity and the court must be satisfied that on account thereof, substantial injury was sustained by the appellant. ..."

In **SP Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs (supra)**, Apex Court also observed that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law and it can be challenged in any Court at any stage of the litigation. Similarly, this Court in **Shri Paresar Vs. Municipal Board Mt.Abu** (supra) observed as under: -

"28. The law must be taken to be settled that the fraud vitiates very solemn proceedings of the Court. As it is found that the petitioner has obtained the decree dated 16/10/90 fraudulently on non-existent ground, it is sufficient to vitiate the entire proceedings of civil court and hold the decree passed by civil court on 16/10/90, Ann.5, to be nullity. As the decree dated 16/10/90 is nullity, therefore, it can be ignored wherever and whenever it is sought to be enforced.

29. I am fortified in taking the aforesaid view from the decision rendered by the Apex Court in the case of **Kiran Singh and others Vs. Chamman Paswan and others (AIR 1954 SC 340)** where it is ruled that if a decree is nullity then its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon even at the stage of execution and even in collateral proceedings."

Even Division Bench of this Court in **Mangilal Vs. State** (supra), observed as under: -

"23. By virtue of Sec.44 of the Evidence Act, even a judgment and decree of a competent court of law can be avoided and it also cannot operate against another party if such party successfully establishes that such a judgment has been obtained by fraud."

In view of what has been observed (supra), it stands settled that no court should be a party to the perpetuation of the fraudulent practice and such a fraudulent act cannot be permitted to be countenanced by a court of law and even by mere passage of time a fraudulent act would not get any sanctity. Fraud unravels every thing.

O.21 R.90 CPC holds application to be maintainable if it has been filed for setting aside

the sale on account of material irregularity or fraud. Section 47 CPC read with O.21 R.90 CPC take note of pre & post-sale illegality or irregularities causing substantial injury to the judgment debtor and when objections are raised by objectors with a specific plea with regard to decree having been obtained by fraud, in my considered opinion, application filed by objectors (respondents) U/s 47 read with O.21 R.90 CPC is maintainable and no error was committed by Executing Court in adjudicating upon such objections despite the fact that the sale deed was duly registered by intervention of the Court on the basis of disputed judgment & decree passed by competent court of jurisdiction. As regards judgment of Apex Court in **Bhawarlal Bhandari Vs. M/s Universal Heavy Mechanical Lifting Enterprises (supra)** relied upon by Counsel for petitioner, it was a case where judgment debtor filed objections U/s 47 CPC contending that decree was a nullity as it was barred by limitation. The Apex Court observed that it was not a case in which the Award decree on the face of it was shown to be without jurisdiction and even if the decree was passed beyond the period of limitation, it would be an error of law or at the best a wrong decision which can be corrected in appellate proceeding and not by the Executing Court which was bound by such decree. While in instant case, facts being distinct, judgment relied upon by Counsel for petitioner does not render any help.

Next contention raised by Counsel for petitioners with regard to the judgment & decree being questioned only by objectors legal heirs of

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Amar Singh and not by Mangal, in no manner be countenanced for the reason that once finding of Court below holding judgment & decree in dispute being obtained by fraud, and holding such judgment & decree to be non-est. In my considered opinion, even if objections having not been raised by legal heirs of Mangal who were allegedly signatory to the sale agreement in no manner can be upheld and this Court after being apprised of obtaining the disputed decree by fraud, will not permit either of parties to perpetuate illegality by virtue of fraudulent act resulting into judgment & decree passed by a competent court of jurisdiction and which has been declared by Executing Court having been obtained by fraud and hence is non est in the eyes of law.

As regards submission made questioning with regard to merits of finding recorded by Executing Court for holding disputed judgment & decree being obtained by fraud and so also declaring such decree as non est, I have gone through finding of fact recorded by Executing Court under Issue Nos.1 to 3, and find that Executing Court has recorded sufficient reasons which are duly supported by material on record and I do not find any illegality which may cause any material irregularity as a result of such finding recorded for obtaining the decree by fraud and for declaring it to be null and void in eyes of law.

Consequently, this revision petition fails and is hereby dismissed along with stay application No.1260/2000. Interim stay order dt.14/07/2000 stands vacated.

(Ajay Rastogi), J.,